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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|---------------------|
| 09/729,478 | 12/04/2000 | Peter Kushner | 407T-896330US | 7340 |
| 22798 | 7590 | 11/03/2003 | | |
| QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C. P O BOX 458 ALAMEDA, CA 94501 | | | EXAMINER | KEMMERER, ELIZABETH |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1646 | |

DATE MAILED: 11/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/729,478 | KUSHNER ET AL. | |
| | Examiner Elizabeth C. Kemmerer, Ph.D. | Art Unit 1646 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 03 September 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-11, 13-16 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-11, 13-16, 18-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Application, Amendments And/Or Claims

The amendment of 03 September 2003 has been entered in full. Claims 12, 17 and 23-26 are canceled. Claims 1-11, 13-16 and 18-22 are under examination.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Withdrawn Objections And/Or Rejections

The application is now fully in compliance with the sequence rules, 37 CFR 1.821-1.825.

The rejection of claims 1-11, 13-16 and 18-22 under 35 U.S.C. § 112, second paragraph, as set forth at pp. 3-4 of the previous Office Action (Paper No. 9, 18 June 2002) is *withdrawn* in view of the amended claims.

The rejection of claims 3, 15 and 21 under 35 U.S.C. § 112, second paragraph, as set forth at p. 4 of the previous Office Action (Paper No. 9, 18 June 2002) is *withdrawn* in view of the amended claims.

The rejection of claims 1-11, 13-16 and 18-22 under 35 U.S.C. § 112, first paragraph, as set forth at pp. 4-7 of the previous Office Action (Paper No. 9, 18 June 2002) is *withdrawn* in view of the amended claims.

The rejection of claims 1, 3-5, 8, 9 and 13-16 under 35 U.S.C. § 102(a) as set forth at pp. 7-8 of the previous Office Action (Paper No. 9, 18 June 2002) is *withdrawn* in view of the amended claims.

The rejection of claims 2, 6 and 7 under 35 U.S.C. § 103(a) as set forth at pp. 9-10 of the previous Office Action (Paper No. 9, 18 June 2002) is *withdrawn* in view of the amended claims.

The rejection of claims 10 and 11 under 35 U.S.C. § 103(a) as set forth at pp. 10-11 of the previous Office Action (Paper No. 9, 18 June 2002) is *withdrawn* in view of the amended claims.

The rejection of claims 18, 20 and 21 under 35 U.S.C. § 103(a) as set forth at pp. 11-12 of the previous Office Action (Paper No. 9, 18 June 2002) is *withdrawn* in view of the amended claims.

The rejection of claim 19 under 35 U.S.C. § 103(a) as set forth at pp. 12-14 of the previous Office Action (Paper No. 9, 18 June 2002) is *withdrawn* in view of the amended claims.

The rejection of claim 22 under 35 U.S.C. § 103(a) as set forth at pp. 14-15 of the previous Office Action (Paper No. 9, 18 June 2002) is *withdrawn* in view of the amended claims.

The rejection of claims 1, 3-5, 8, 9 and 13-16 under 35 U.S.C. § 103(a) as set forth at pp. 15-17 of the previous Office Action (Paper No. 9, 18 June 2002) is *withdrawn* in view of the amended claims.

The rejection of claims 2, 6 and 7 under 35 U.S.C. § 103(a) as set forth at pp. 17-18 of the previous Office Action (Paper No. 9, 18 June 2002) is *withdrawn* in view of the amended claims.

The rejection of claims 10 and 11 under 35 U.S.C. § 103(a) as set forth at pp. 18-19 of the previous Office Action (Paper No. 9, 18 June 2002) is *withdrawn* in view of the amended claims.

The rejection of claims 18, 20 and 21 under 35 U.S.C. § 103(a) as set forth at pp. 19-21 of the previous Office Action (Paper No. 9, 18 June 2002) is *withdrawn* in view of the amended claims.

The rejection of claim 19 under 35 U.S.C. § 103(a) as set forth at pp. 21-22 of the previous Office Action (Paper No. 9, 18 June 2002) is *withdrawn* in view of the amended claims.

The rejection of claim 22 under 35 U.S.C. § 103(a) as set forth at pp. 22-23 of the previous Office Action (Paper No. 9, 18 June 2002) is *withdrawn* in view of the amended claims.

Double Patenting

Claims 1-11, 13-16 and 18-22 remain rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Patent No. 5,723,291. Although the conflicting claims are not identical, they are not patentably distinct from each other for reasons of record.

Application indicates that a terminal disclaimer will be filed upon an indication of allowable subject matter. As the only remaining issue is the double patenting rejection, Applicant must either file a terminal disclaimer or provide a complete traversal in response to the instant Office Action.

Conclusion

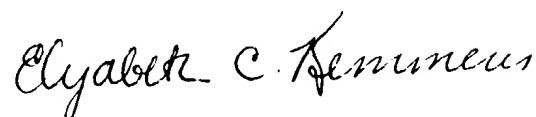
No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth C. Kemmerer, Ph.D. whose telephone number is (703) 308-2673. The examiner can normally be reached on Monday through Thursday, 7:00 a.m. to 5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne L. Eyler, Ph.D. can be reached on (703) 308-6564. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

ECK



ELIZABETH KEMMERER
PRIMARY EXAMINER